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U.S.S.N: 09/890,836

Case No.: 20377YP

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1648

#8, Election

PATENT

12/13/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Bett <i>et al.</i>		
Serial No.:	09/890,836	Case No.:	20377YP
Filed:	August 3, 2001		
For:	IMPROVED HELPER-DEPENDENT VECTOR SYSTEM FOR GENE THERAPY		

Art Unit:

1648

Examiner:

Hill, M.G.

The Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

RESPONSE TO RESTRICTION REQUIREMENT UNDER 37 C.F.R. §1.143

Sir:

This is in response to the outstanding Office Action mailed November 5, 2002, in the above-identified application, having a ONE (1) month period for response set to expire December 5, 2002. Reconsideration and allowance of the above-identified patent application are respectfully requested.

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Claims 1-41 are pending in the application. The Examiner required restriction of these claims and an election of one of the following patentably distinct inventions:

- Group I: Claims 1-15, drawn to a nucleic acid comprising a low homology packaging signal cassette.
- Group II: Claims 16-24 and 34, drawn to an adenovirus helper virus and a cell containing it.
- Group III: Claims 25-27, drawn to a helper dependent adenovirus vector with one segment of stuffer DNA.
- Group IV: Claims 28-33, drawn to a helper dependent adenovirus vector with one segment of stuffer DNA.
- Group V: Claims 35-41, drawn to a method to generate helper dependent adenovirus requiring trans functions supplied by the cell not necessarily by a helper virus.

Applicants provisionally elect Group I with traverse. Applicants submit that the examination of the claims can be made without any serious burden on the part of the Examiner.

The two criteria for proper restriction mandated by MPEP §803 are: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is not required. Although Applicants agree that each of the groups is patentably distinct over the other, Applicants submit that the inventions are sufficiently related such that they impose no serious burden on the Examiner to search and examine the application. In fact, substantial economy of the Examiner's time can be realized by conducting a single search of the art and significant expense can be avoided on the part of the Applicants. Accordingly, reconsideration and withdrawal of the restriction requirement is respectfully requested. Alternatively, Applicants respectfully request regrouping of the claims, e.g. by combining Groups I and II into a single group for examination.

Applicants submit that all claims are in condition for allowance and a favorable action on the merits is earnestly solicited. If the Examiner believes that a telephone conference would be of value, he is requested to call the undersigned attorney at the number listed below.

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Any fees required in connection with this amendment may be taken from Merck Deposit Account No. 13-2755.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date appearing below.

MERCK & CO., INC.
By *Joan Switzer* Date 12/5/02

Date: 12/5/02

Respectfully submitted,

By *Joan Switzer*
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